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9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 **E VERRICK WISE** an individual, **NOEL**
12 **RUSSELL**, an individual, and **LAWRENCE**
13 **MARKS**, an individual,

14 Plaintiffs,

15 v.

16 **STATE FARM GENERAL INSURANCE**
17 **COMPANY**, an Illinois corporation, and
18 **DOES 1 through 10**,

19 Defendants.

Case No. 4:23-cv-00163-HSG

**STIPULATION AND PROTECTIVE
ORDER REGARDING PRODUCTION
OF DOCUMENTS AND
RESTRICTING DISSEMINATION OF
DISCOVERY**

Complaint filed: January 12, 2023

1 Defendant State Farm General Insurance Company (“State Farm”) and plaintiffs E
2 Verrick Wise and Noel Russell (“Plaintiffs”) hereby stipulate to the following protective order
3 with respect to and to accommodate State Farm’s production of certain documents in response to
4 requests for production of documents propounded in this matter.

5 1. PURPOSES AND LIMITATIONS

6 Disclosure and discovery activity in this action are likely to involve production of
7 confidential, proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
9 Accordingly, the parties hereby stipulate to and petition the court to enter the following
10 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
11 protections on all disclosures or responses to discovery and that the protection it affords from
12 public disclosure and use extends only to the limited information or items that are entitled to
13 confidential treatment under the applicable legal principles. The parties further acknowledge, as
14 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
15 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
16 followed and the standards that will be applied when a party seeks permission from the court to
17 file material under seal.

18 2. DEFINITIONS

19 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
20 information or items under this Order.

21 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
22 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
23 of Civil Procedure 26(c).

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
25 well as their support staff).

26 2.4 Designating Party: a Party or Non-Party that designates information or items that
27 it produces in disclosures or in responses to discovery as “CONFIDENTIAL Pursuant to
28 Protective Order.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL Pursuant to Protective Order.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material
 3 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
 4 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 6 However, the protections conferred by this Stipulation and Order do not cover the following
 7 information: (a) any information that is in the public domain at the time of disclosure to a
 8 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
 9 a result of publication not involving a violation of this Order, including becoming part of the
 10 public record through trial or otherwise; and (b) any information known to the Receiving Party
 11 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
 12 obtained the information lawfully and under no obligation of confidentiality to the Designating
 13 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations imposed by
 16 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 17 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 18 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
 19 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
 20 action, including the time limits for filing any motions or applications for extension of time
 21 pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 24 or Non-Party that designates information or items for protection under this Order must take care
 25 to limit any such designation to specific material that qualifies under the appropriate standards.
 26 The Designating Party must designate for protection only those parts of material, documents,
 27 items, or oral or written communications that qualify – so that other portions of the material,
 28

1 documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or retard the case development process or to impose unnecessary
6 expenses and burdens on other parties) may expose the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it designated
8 for protection do not qualify for protection, that Designating Party must promptly notify all other
9 Parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
11 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
12 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
13 designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but
16 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
17 Party affix the legend "CONFIDENTIAL Pursuant to Protective Order" to each page that
18 contains protected material. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
20 making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents or materials available for inspection
22 need not designate them for protection until after the inspecting Party has indicated which
23 material it would like copied and produced. During the inspection and before the designation, all
24 of the material made available for inspection shall be deemed "CONFIDENTIAL Pursuant to
25 Protective Order." After the inspecting Party has identified the documents it wants copied and
26 produced, the Producing Party must determine which documents, or portions thereof, qualify for
27 protection under this Order. Then, before producing the specified documents, the Producing
28 Party must affix the "CONFIDENTIAL Pursuant to Protective Order" legend to each page that

contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL Pursuant to Protective Order” and/or alter the file name of the native ESI to include “Conf.” and shall inform all recipients in writing of the designation at the time that the ESI is produced. If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written

1 notice must recite that the challenge to confidentiality is being made in accordance with this
2 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
3 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
4 forms of communication are not sufficient) within 14 days of the date of service of notice. In
5 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
6 designation was not proper and must give the Designating Party a reasonable opportunity to
7 review the designated material, to reconsider the circumstances, and, if no change in designation
8 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
9 the next stage of the challenge process only if it has engaged in this meet and confer process first
10 or establishes that the Designating Party is unwilling to participate in the meet and confer
11 process in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the Challenging Party shall file and serve a motion to challenge confidentiality
14 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
15 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
16 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
17 accompanied by a competent declaration affirming that the movant has complied with the meet
18 and confer requirements imposed in the preceding paragraph. Failure by the Challenging Party to
19 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
20 shall automatically waive challenging the confidentiality designation for each challenged
21 designation. Any motion brought pursuant to this provision must be accompanied by a competent
22 declaration affirming that the movant has complied with the meet and confer requirements
23 imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
27 sanctions. All parties shall continue to afford the material in question the level of protection to
28 which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Final Disposition – Reservations. Nothing in this Protective Order disallows Defendants from:

(a) complying with any state or federal law or regulation, including reporting of information to a regulator or government entity as permitted and/or required by applicable state and federal law;

(b) adding information discovered that is relevant to a claim to the relevant electronic record in its electronic claim system, or maintaining or using such information and documents in the ordinary course of its business operations;

(c) disclosing evidence of a crime or fraud;

(d) retaining information necessary to meet mandated retention requirements including complying with the privacy and records retention requirements of the California Department of Insurance and other state and federal laws or Court orders;

(e) reporting information as permitted and/or required by applicable state and federal law, including reporting to the Insurance Services Office, Inc., or;

(f) retaining copies of Protected Information that may exist on back-up media or other computer or archive storage not regularly accessed by business users in the ordinary course,

Provided that should a copy of the Confidential Information be accessed, it will not be used for a purpose inconsistent with this Order.

7.3 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may

disclose any information or item designated “CONFIDENTIAL Pursuant to Protective Order” only to (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation; (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation; (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); (d) the court and its personnel; (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; (g) the author or recipient of a document containing the information or a custodian or other person who otherwise lawfully possessed or knew the information; (h) law enforcement officers, and/or other government agencies, as permitted or required by applicable state and federal law; (i) a jury involved in litigation concerning the claims and any defenses to any claims in this lawsuit; (j) anyone as otherwise required by law; and (k) as authorized by the Parties specifically.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL Pursuant to Protective Order,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 2 the other litigation that some or all of the material covered by the subpoena or order is subject to
 3 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
 4 and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 6 Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the
 8 subpoena or court order shall not produce any information designated in this action as
 9 “CONFIDENTIAL Pursuant to Protective Order” before a determination by the court from
 10 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
 11 permission. The Designating Party shall bear the burden and expense of seeking protection in
 12 that court of its confidential material – and nothing in these provisions should be construed as
 13 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
 14 another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 16 LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-Party in
 18 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
 19 connection with this litigation is protected by the remedies and relief provided by this Order.
 20 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
 21 additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce a
 23 Non-Party’s confidential information in its possession, and the Party is subject to an agreement
 24 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

25 (1) promptly notify in writing the Requesting Party and the Non-Party that
 26 some or all of the information requested is subject to a confidentiality agreement with a Non-
 27 Party;
 28

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product

1 protection, the parties may incorporate their agreement in the stipulated protective order
 2 submitted to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 5 seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 7 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
 9 no Party waives any right to object on any ground to use in evidence of any of the material
 10 covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating Party
 12 or a court order secured after appropriate notice to all interested persons, a Party may not file in
 13 the public record in this action any Protected Material. A Party that seeks to file under seal any
 14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
 15 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
 16 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
 17 request establishing that the Protected Material at issue is privileged, protectable as a trade
 18 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
 19 Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
 20 the Receiving Party may file the information in the public record pursuant to Civil Local Rule
 21 79-5(e) unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 Subject to Paragraph 7.2 above, within 60 days after the final disposition of this action, as
 24 defined in Paragraph 4, each Receiving Party must return all Protected Material to each
 25 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
 26 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
 27 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
 28 the Receiving Party must submit a written certification to the Producing Party by the 60 day

1 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
 2 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
 3 abstracts, compilations, summaries or any other format reproducing or capturing any of the
 4 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
 5 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
 7 consultant and expert work product, even if such materials contain Protected Material. Any such
 8 archival copies that contain or constitute Protected Material remain subject to this Protective
 9 Order as set forth in Section 4. To the extent that this Protective Order requires the destruction or
 10 return of documents at the conclusion of this case, this requirement is not intended to require
 11 Defendants to return or destroy any documents they are otherwise required by law to maintain.

12 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

13 Date: November 13, 2023

Kerley Schaffer LLP

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15
16 /s/ Christopher Carling
 17 Dylan L. Schaffer
 18 Christopher Carling
 Attorneys for Plaintiffs

19 Date: November 13, 2023

Pacific Law Partners, LLP

20 /s/ Sandra E. Stone
 21 Sandra E. Stone
 22 Colin M. Adkins
 Attorneys for Defendant

23 **ORDER**

24 The above STIPULATION hereby becomes the PROTECTIVE ORDER of the
 25 Court. DATED: 11/14/2023

26
27 Haywood S. Gull Jr.
 28 UNITED STATES DISTRICT COURT JUDGE

ATTESTATION PER LOCAL RULE 5-1

Pursuant to section Civil Local Rule 5-1(i)(3), I hereby certify that the content of this document is acceptable to Sandra Stone, counsel for Defendant State Farm Gen. Ins. Co., and that I have obtained Ms. Stone's authorization to affix her electronic signature to this document.

/s/ Christopher Carling
Christopher Carling

EXHIBIT A**Acknowledgment and Agreement to be Bound**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
 that was issued by the United States District Court for the Northern District of California on
 _____, 2023 in the case of *E Verrick Wise et al. v. State Farm General Insurance*
Company, Case Number 4:23-cv-00163-HSG . I agree to comply with and to be bound by all the
 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with this action or
 any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

 Printed Name

 Signature